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Will the federal government's proposal to deregulate local zoning laws spur housing development?

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In September, the White House issued a Housing Development Toolkit for local municipalities calling for a rare action from the Obama Administration: deregulation. In an effort to spur housing development, the White House report seeks community intervention to deregulate zoning laws which it perceives as unduly restricting new housing developments, citing the disparity between post-recession economic recovery and the lack of new housing options in areas where the recent economic prosperity has taken place. The question for communities and real estate developers is whether the federal government has the influence or legal authority to implement the change sought in the Administration's white paper.

Zoning laws and restrictions regulating housing developments have historically been a creature of local municipalities. Absent certain state exemptions, approval of building projects rests on local zoning regulations and the boards that oversee and interpret the ordinances, with a heavy dose of input

and influence from community stakeholders. However, as growth in urban markets has boomed in recent years, some have argued that locally regulated, overly burdensome zoning laws in metropolitan areas and surrounding suburbs have restricted much needed growth in the housing market. Eastern Massachusetts has seen a significant increase in zoning regulation over the past thirty years, particularly regarding the number of municipalities enacting subdivision control laws, which are a primary tool for development of new suburban housing. Within Massachusetts, the City of Boston excepted, studies have concluded that the lack of housing developments in the state has not been due to a land shortage, but rather to an increase in regulations.

The Obama Administration's main areas of concern regarding over-regulation are that: (a) housing production has not kept up with demand; (b) limitation on development aggravates housing affordability, increasing commutes or pushing prospects out of the job market altogether; and (c) limited new housing tends to be disproportionately concentrated in low-income communities, causing displacement, among other issues. The solution, according to the Administration's report, would be to deregulate local zoning codes with municipalities increasing housing development by establishing by-right development, streamlining

permitting, eliminating off-street parking requirements, enacting high-density zoning, and using various tax incentives to spur growth, among others activities.

If enacted by municipalities, the deregulation suggestions cited in the report could increase development and housing supply, but then the issue is how the federal government can enforce its recommendations by municipalities where regulations remain almost entirely within the discretion and control of community stakeholders and the boards that oversee zoning applications and appeals. One tool for compliance is President Obama's FY 2017 HUD budget, which "includes a \$300 million proposal for Local Housing Policy Grants to help facilitate those cities' success in modernizing their regulatory approaches." Notwithstanding this proposed monetary incentive, the report is unlikely to incite change against hyper-localized interests where there is little practical incentive for change. Many citizens and community stakeholders remain fervently against new developments based on concerns over traffic and infrastructure impacts, worsening of the environment, and further stress on school systems and other municipal programs.

There have, however, been changes in recent years which could signify a willingness by certain communities to adopt federal rec-

ommendations and deregulation. The Administration report notes that Massachusetts is a leader in initiating greater affordable housing options by "removing restrictions, implementing transit-oriented zoning ordinances, and speeding up permitting and construction processes." The City of Boston has made efforts in recent years to expedite permitting by upgrading technology, putting permit tracking online, and streamlining certain projects that do not otherwise meet the threshold for review required of large scale commercial projects. Developers in Massachusetts often utilize Chapter 40B, a state law which allows qualified residential housing developments to bypass more stringent local regulations so long as certain affordable housing requirements are met for 20-25% of the proposed units.

While the federal government's recommendations for relaxed zoning standards are a step towards creating an adequate housing supply, advocates seeking deregulation at the local level must continue to educate and encourage the involvement and influence of community citizens and stakeholders to spur any meaningful change.

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